

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1712 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 - No

DEBABRATA MUKHERJEE

Versus

AMARKUMAR VADHUBHA JADEJA

Appearance:

MS KUSUM M SHAH for Petitioner
NOTICE SERVED for Respondent No.1, but absent
MR SA PANDYA, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 25/01/99

ORAL JUDGEMENT

This petition has been filed by the petitioner-accused under sec.482 of Cr.P.C. A complaint was filed in the Court of learned Chief Judicial Magistrate, Rajkot, alleging that the petitioner, who is the owner of Charulata Film Makers and partner of Loyal

Film Distributors, has committed offences punishable under sec.397 of IPC and sec.63 of Copy Rights Act, 1957, for having allegedly theft a song from a film "Madi Tara Aghor Nagar Vage" produced by the complainant, wherein learned Chief Judicial Magistrate passed an order for investigation under sec.156(3) of Cr.P.C. by the Police pursuant to which, Police started investigation. This petition is filed when the investigation was under progress.

2. During the pendency of this petition, various Criminal Misc. Applications and Criminal Revisions Applications were preferred by the parties in this proceeding which were disposed of by this Court on merits. I am not entering into the details of those applications as the same have been decided on merits.

3. I have heard learned counsel for the petitioner, Ms.Kusumben Shah and learned APP for the State, Mr.S.A.Pandya. The respondent No.2-original complainant did not remain present either personally or through his advocate though notice was duly served on him.

4. Ms.Kusumben Shah has mainly argued that the petitioner is totally innocent and he has not committed any offence either under sec.379 of IPC or under sec.63 of Copy Right Act, 1957. She has further argued that the petitioner has not committed theft of a song from the film "Madi Tara Aghor Nagar Vage". She has shown me scripts of both the songs and argued that it does not tally with each other. She has argued on going through the FIR that even if the FIR is accepted as it is, then also, no offence is said to have been committed by the present petitioner as alleged. She has contended that there were civil disputes between the parties and original complainant has filed one civil suit No.168 of 1988 in the Court of Civil Judge (Sr.Divn.), Rajkot on 24-2-1988 for permanent injunction and has also taken out notice of motion for interim relief for release of the film "Rampir" which was produced by the complainant, but the Court has declined to grant any interim relief. Ultimately, he has withdrawn the said suit unconditionally. Thereafter, he has filed another suit with the same averments and same cause of action being regular civil suit No.187 of 1988. In the said suit also, he has prayed for interim relief which was also refused by the Court below. So, complainant has filed the present false complaint on 15-3-1988, which is nothing but a plan to extract money from the petitioner. According to the learned counsel for the petitioner, it is not prima-facie established as to who is the writer of

the song in question. Over and above, it is argued that it is not the song which has been written by anybody, but it is a folk song of God Rampir. Therefore, there is no question of any alleged theft committed by the petitioner under sec.63 of Copy Rights Act.

5. I have gone through the proceedings which have been shown to me by the learned counsel for the petitioner and learned APP for the State. As I have stated earlier, the original complainant, though served, chosen not to remain present before this Court either personally or through advocate.

6. It is transpired from the record and proceedings that the song which was alleged to have been theft by the petitioner is a folk song because when comparing one song with the other, it does not tally with each other. I am totally in agreement with the contention raised by the learned counsel for the petitioner that the present complaint is nothing but a counterblast on the part of the complainant because he could not succeed in both the civil suits which were filed by him within one month for the same cause of action, as can be seen from the dates mentioned in the petitions, i.e. first suit on 24-2-1988, second suit on 2-3-1988 and criminal complaint on 15-3-1988. So, it is transpired from the above civil suit filed by the original complainant that though it is a civil dispute between the parties, original complainant has tried to convert the same into criminal one which is nothing but misuse of the process of law.

7. It is true that during the pendency of this petition, Investigating Officer has submitted the charge-sheet in the court and, therefore, further proceedings have been stayed by this Court on 21-11-1988 after the petition was duly amended. Even after verifying the charge-sheet, prima-facie it cannot be said that petitioner is an accused either under sec.379 of IPC or under sec.63 of Copy Rights Act as alleged by the original complainant-respondent No.2 because it is a folk song which is alleged to have been theft. Moreover, it has not been established that the said song was written by Apabhai and solely produced by the complainant himself.

8. It is observed by the Supreme Court in a decision reported in Judgments Today 1998(5) S.C. 452 as under:

"that an accused is not debarred from approaching the court earlier than framing of charge. Where allegations do not make out any offence, power

under Section 482 can be exercised."

In view of the above observation, I am of the opinion that in the present case also, power under sec.482 has to be exercised by this Court when the allegations made against the petitioner are not prima-facie established.

9. In the result, therefore, will be that the prayer made in the petition of quashing the complaint so far as this petitioner is concerned, will have to be allowed. Accordingly, it is allowed. The complaint by way of Inquiry Case No.60 of 1988 relating to petitioner is quashed and they stand discharged. Rule is made absolute accordingly.

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